

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-12522-RWZ

PHILLIP KING

v.

CITY OF BOSTON

ORDER ON APPLICATION FOR CERTIFICATE OF APPEALABILITY  
March 3, 2008

ZOBEL, D.J.

Petitioner for a writ of habeas corpus under 28 U.S.C. §2254 included in his initial petition both exhausted and unexhausted claims. To allow him to conclude all claims the court stayed this proceeding. Although petitioner exhausted only his claims of ineffective assistance of counsel, he continues to raise all grounds originally presented and which he did not exhaust. This court ultimately addressed each ground presented to avoid further delay. Petitioner filed an appeal from the judgment for respondent and now requests a certificate of appealability.

The certificate is denied as to four of petitioner's grounds which the state court decided on the basis of state law, Grounds B (juror impartiality)<sup>1</sup>, C (partial written jury instructions), D (instructions on duty to retreat) and F (prosecutor's improper closing argument). It is denied as to Ground E (improper cross examination of defendant's expert) because it does not state a constitutional violation. The certificate is granted as

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<sup>1</sup>The letters refer to the designation of the several arguments in the court's opinion on the merits of the petition.

to the claims of ineffective assistance of trial and appellate counsel because judges may differ whether these claims are untimely.

\_\_\_\_\_  
March 3, 2008

DATE

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/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE